

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:12CR19
(Judge Keeley)

JAMES ROBERT HURST,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA
BE ACCEPTED AND SCHEDULING SENTENCING HEARING**

On August 29, 2012, defendant, James Robert Hurst, appeared before United States Magistrate Judge John S. Kaull and moved this Court for permission to enter a binding plea of GUILTY to Count One of the Indictment. The defendant stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the binding plea was knowingly and voluntarily entered, and recommending to this Court whether the binding plea should be accepted.

Based upon the defendant's statements during the plea hearing and the testimony of Doddridge County Sheriff's Deputy Tammy Satterfield, the magistrate judge found that the defendant was

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competent to enter a plea, that the binding plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against him and the consequences of his binding plea, and that a factual basis existed for the tendered plea. On August 29, 2012, the magistrate judge entered an "Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case" ("R&R") (Dkt. No. 44) finding a factual basis for the plea, recommending that this Court accept the plea of guilty to Count One of the Indictment and directing the parties to file any written objections within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections.

Accordingly, this Court **AFFIRMS** and **ACCEPTS** the magistrate judge's R&R and **ADJUDGES** the defendant **GUILTY** of the crime charged in Count One. Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), acceptance of the proposed binding plea agreement and stipulated addendum to the plea agreement, is **DEFERRED** until the Court has received and reviewed the presentence report prepared in this matter.

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Pursuant to U.S.S.G. § 6A1 et seq., it **ORDERS**:

1. The Probation Officer to undertake a presentence investigation of **JAMES ROBERT HURST** and prepare a presentence report for the Court;

2. The Government and the defendant shall provide their versions of the offense to the Probation Officer by **October 17, 2012**;

3. The Probation Officer shall disclose the presentence report to the defendant, defense counsel, and the United States on or before **November 19, 2012**; however, the Probation Officer is directed not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(b)(6)(A);

4. Counsel shall file **WRITTEN OBJECTIONS** to the presentence report and may file a **SENTENCING MEMORANDUM** that evaluates sentencing factors the parties believe to be relevant under 18 U.S.C. § 3553(a) (including the sentencing range under the advisory Guidelines) and explains any proposed sentence, on or before **December 3, 2012**;

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5. The Probation Officer shall submit to the Court the presentence report with addendum on or before **December 17, 2012;** and

6. Counsel shall file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **December 28, 2012.**

The Court continued the defendant on release pursuant to the previously entered order setting conditions of release.

The Court will conduct the sentencing hearing on **Friday, January 4, 2013 at 1:30 P.M.**

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: October 3, 2012

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE